

1 Chapter 38 FLOODS\*  
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3  
4

5 \*Cross references: Buildings and building regulations, ch. 10; filling in property, § 30-76 et seq.  
6

7 State law references: Flood control generally, NMSA 1978, § 4-50-1 et seq.; Albuquerque metropolitan  
8 arroyo flood control, NMSA 1978, § 78-16-1 et seq., [NMSA 1978 §3-18-7 et seq.](#) |  
9

10 Article I. In General

11 Secs. 38-1--38-30. Reserved.  
12

13 Article II. Flood Damage Prevention

14 Division 1. Generally

15 Sec. 38-31. Purpose of article.

16 Sec. 38-32. Definitions.

17 Sec. 38-33. Penalty for violation of article.

18 Sec. 38-34. Interpretation of article and conflicting provisions.

19 Sec. 38-35. Methods and provisions for achieving purpose of article.

20 Secs. 38-36--38-70. Reserved.  
21

22 Division 2. Administration and Enforcement

23 Sec. 38-71. Floodplain administrator; creation of position; duties and responsibilities.

24 Sec. 38-72. Development permits.

25 Sec. 38-73. Variances and appeals.

26 Secs. 38-74--38-100. Reserved.  
27

28 Division 3. Provisions for Flood Hazard Reduction

29 Sec. 38-101. General standards.

30 Sec. 38-102. Specific standards.

31 Secs. 38-103--38-140. Reserved.  
32

33 Article III. Storm Drainage

34 Division 1. Generally

35 Sec. 38-141. Purpose and intent of article.

36 Sec. 38-142. Definitions.

37 Sec. 38-143. Violations of article; procedures for remedy; penalty.

38 Sec. 38-144. Interpretation of article.

39 Sec. 38-145. Warning and disclaimer of liability.

40 Sec. 38-146. Jurisdiction of article.

41 Sec. 38-147. Stormwater quality

42 Secs. 38-148--38-170. Reserved.  
43  
44

45 Division 2. Administration and Enforcement

1 Sec. 38-171. Generally.  
2 Sec. 38-172. Appeals from county engineer determinations.  
3 Sec. 38-173. Rule change procedures; criteria and standards.  
4 Sec. 38-174. Inspections.  
5 Secs. 38-175--38-200. Reserved.

6  
7 Division 3. Design Standards

8 Sec. 38-201. General provisions.  
9 Sec. 38-202. Surface use of streets for drainage and flood control purposes.  
10 Sec. 38-203. Crossings.  
11 Sec. 38-204. Financial responsibility and guarantee.  
12 Sec. 38-205. Multiple use rights-of-way and easements.  
13 Sec. 38-206. Maintenance responsibility.  
14  
15  
16  
17  
18  
19  
20

21 Sec. 38-31. Purpose of article.  
22

23 The regulations and restrictions of this article are designed to promote the public health, safety, and general  
24 welfare and/or minimize public and private losses due to flooding in flood hazard areas as shown on the  
25 flood insurance rate map.  
26

27 (Ord. No. 88-46, § 2, 12-27-88)  
28  
29

30 Sec. 38-32. Definitions.  
31

32 The following words, terms and phrases, when used in this article, shall have the meanings ascribed to  
33 them in this section, except where the context clearly indicates a different meaning:  
34

35 Appeal means a request for a review of the county floodplain administrator's interpretation of any provision  
36 of this article or a request for a variance.  
37

38 Area of shallow flooding means a designated AO or AH zone on a community's flood insurance rate map  
39 (FIRM) with a one percent or greater annual chance of flooding to an average depth of one to three feet  
40 where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where  
41 velocity flow may be evident. Such flow is characterized by ponding or sheet flow.  
42

43 Area of special flood hazard means land in the floodplain within the unincorporated areas of the county  
44 subject to a one percent or greater chance of flooding in any given year.  
45

1 Base flood means the flood having a one percent chance of being equalled or exceeded in any given year.

2  
3 Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

4  
5 Critical feature means an integral and readily identifiable part of a flood protection system, without which  
6 the flood protection provided by the entire system would be compromised.

7  
8 Development means any manmade change to improved or unimproved land including, but not limited to,  
9 buildings or other structures on the land, mining, filling, paving, excavation, or drilling operations located  
10 within the area of special flood hazard.

11  
12 Elevated building means a nonbasement building:

13  
14 (1) Built, in the case of a building in zones A1-30, A, AO, AH, B, and C to have the top of the elevated  
15 floor elevated above the ground by means of pilings, columns (posts and piers), or shear walls parallel to  
16 the flow of the water; and

17  
18 (2) Adequately anchored so as not to impair the structural integrity of the building during a flood of up to  
19 the magnitude of the base flood. In the case of zones A1-30, A, A99, AO, AH, B, and C the term "elevated  
20 building" also includes a building elevated by means of fill or solid foundation perimeter walls with  
21 openings sufficient to facilitate the unimpeded movement of floodwaters.

22  
23 Existing construction means, for the purposes of determining rates, structures for which the "start of  
24 construction" commenced before the effective date of the FIRM, or before January 1, 1975, for FIRMs  
25 effective before that date. The term "existing construction" may also be referred to as "existing structures."

26  
27 Existing structures. See Existing construction.

28  
29 Existing Manufactured Home Park or Subdivision means a manufactured home park or subdivision for  
30 which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed  
31 (including, at a minimum, the installation of utilities, the construction of streets, and either final site  
32 grading or the pouring of concrete pads) is completed before the effective date of the floodplain  
33 management regulations adopted by a community.

34  
35 Expansion To An Existing Manufactured Home Park or Subdivision means the preparation of additional  
36 sites by the construction of facilities for servicing the lots on which the manufactured homes are to be  
37 affixed (including the installation of utilities, the construction of streets, and either final site grading or the  
38 pouring of concrete pads).

39  
40 Flood or flooding means a general and temporary condition of partial or complete inundation of normally  
41 dry land areas from:

42  
43 (1) The overflow of inland waters.

44  
45 (2) The unusual and rapid accumulation or runoff of surface waters from any source.

1  
2 Flood insurance rate map means the official map of a community, on which the Federal Emergency  
3 Management Agency has delineated both the areas of special flood hazards and the risk premium zones  
4 applicable to the community.  
5

6 Flood insurance study means the official report provided by the Federal Emergency Management Agency.  
7 The report contains flood profiles, water surface elevation of the base flood, as well as the flood boundary-  
8 floodway map.  
9

10 Flood protection system means those physical structural works for which funds have been authorized,  
11 appropriated and expended, and which have been constructed specifically to modify flooding in order to  
12 reduce the extent of the areas within the community subject to a special flood hazard, and the extent of the  
13 depths of associated flooding. Such a system typically includes dams, reservoirs, levees or dikes. These  
14 specialized flood modifying works are those constructed in conformance with sound engineering standards.  
15

16 Floodplain or floodprone area means any land area susceptible to being inundated by water from any  
17 source. See the definition of Flooding.  
18

19 Floodplain administrator. means an assigned public official certified in Floodplain administration per NM  
20 State statute 3-18-7 NMSA 1978~~Floodplain administrator. See the agreement between the City of~~  
21 ~~Albuquerque and the county, dated April 6, 1982.~~  
22

23 Flood Proofing means any combination of structural and non-structural additions, changes, or adjustments  
24 to structures which reduce or eliminate flood damage to real estate or improved real property, water and  
25 sanitary facilities, structures and their contents.  
26

27 Floodway means the channel of a river or other watercourse and the adjacent land areas that must be  
28 reserved in the order to discharge the base flood without cumulatively increasing the water surface  
29 elevation more than a designated height.  
30

31 Functionally Dependent Use means a use which cannot perform its intended purpose unless it is located or  
32 carried out in close proximity to water. The term includes only docking facilities, port facilities that are  
33 necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities,  
34 but does not include long-term storage or related manufacturing facilities.  
35

36 Highest adjacent grade means the highest natural elevation of the ground surface prior to construction next  
37 to the proposed walls of a structure.  
38

39 Historic Structure means any structure that is:  
40

- 41 (1) Listed individually in the National Register of Historic Places (a listing maintained by the Department  
42 of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for  
43 individual listing on the National Register;  
44  
45 (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical

1 significance of a registered historic district or a district preliminarily determined by the Secretary to  
2 qualify as a registered historic district;

3  
4 (3) Individually listed on a state inventory of historic places in states with historic preservation programs  
5 which have been approved by the Secretary of Interior; or

6  
7 (4) Individually listed on a local inventory of historic places in communities with historic preservation  
8 programs that have been certified either:

9  
10 a) by an approved state program as determined by the Secretary of the Interior or;

11  
12 b) directly by the Secretary of the Interior in states without approved programs.  
13

14 Levee means a manmade structure, usually an earthen embankment, designed and constructed in  
15 accordance with sound engineering practices to contain, control or divert the flow of water so as to provide  
16 protection from temporary flooding.

17  
18 Levee system means a flood protection system which consists of levees and associated structures, such as  
19 closure and drainage devices, which are constructed and operated in accordance with sound engineering  
20 practices.

21  
22 Lowest floor means the lowest floor of the lowest enclosed area, including the basement. An unfurnished or  
23 flood-resistant enclosure, usable solely for parking of vehicles, building access, or storage in an area other  
24 than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so  
25 as to render the structure in violation of the applicable nonelevation design requirement of section 60.3 of  
26 the National Flood Insurance Program regulations.

27  
28 Manufactured home means a structure transportable on one or more sections, which is built on a  
29 permanent chassis and is designed for use with or without a permanent foundation when connected to the  
30 required utilities. For floodplain management purposes, the term "manufactured home" also includes park  
31 trailers, travel trailers and other similar vehicles placed on a site for greater than 180 consecutive days. For  
32 insurance purposes, the term "manufactured home" does not include park trailers, travel trailers and other  
33 similar vehicles. The term "manufactured home" does not include recreational vehicles.

34  
35 ~~Mean-Effective November 19, 2003 the mean~~ sea level means for purposes of the National Flood Insurance  
36 Program, ~~the National Geodetic Vertical Datum (NGVD) of 1929- the National American Vertical Datum~~  
37 ~~of 1988 (NAVD '88) or other datum,~~ to which base flood elevations shown on the community's flood  
38 insurance rate map are referenced.

39  
40 Mobile home. See Manufactured home.

41  
42 New construction means, for floodplain management purposes, structures for which the start of  
43 construction commenced on or after the effective date of a floodplain management regulation adopted by  
44 the community.  
45

1 Recreation Vehicle means a vehicle that :

- 2
- 3 (1) is on site for fewer than 180 consecutive days.
- 4
- 5 (2) be fully licensed and ready for highway use.
- 6
- 7 (3) is attached to the site by means of quick disconnect type utility.
- 8
- 9 (4) has no permanent attached additions.

10 (+)

11 Start of construction means substantial improvement and means the date the building permit was issued,  
12 provided the actual start of construction, repair, reconstruction, placement, or other improvement was  
13 within 180 days of the permit date. The actual start means either the first placement or permanent  
14 construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the  
15 construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured  
16 home on a foundation. Permanent construction does not include land preparation, such as clearing, grading  
17 and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for  
18 basement, footings, piers or foundations or the erection of temporary forms; nor does it include the  
19 installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units  
20 or not part of the main structure.

21

22 Structure means a walled and roofed building, a mobile home, or a gas or liquid storage tank, that is  
23 principally located above the ground.

24

25 Substantial improvements means any repair, reconstruction, or improvement of a structure, the cost of  
26 which equals or exceeds 50 percent of the market value of the structure either:

- 27
- 28 (1) Before the improvement or repair is started, or
- 29
- 30 (2) If the structure has been damaged and is being restored, before the damage occurred.

31

32 For the purpose of this article, substantial improvement is considered to occur when the first alteration of  
33 any wall, ceiling, floor, or other structural part of a structure commences, whether or not that alteration  
34 affects the external dimensions of the structure. Exception: Any project for improvement of a structure to  
35 comply with existing state or local health, sanitary, safety, and building code specifications which are  
36 solely necessary to ensure safe living conditions and any alteration of a structure listed in the National  
37 Register of Historic Places or in the state inventory of historic places are exempted from the definition of  
38 the term "substantial improvement."

39

40 Variance means a grant of relief from the requirements of this article which permits construction in a  
41 manner that would otherwise be prohibited by this article.

42

43 Violation means the failure of a structure or other development to be fully compliant with the community's  
44 floodplain management regulations. A structure or other development without the elevation certificate,

1 other certifications, or other evidence of compliance required in sections 38-71(b)(1), 38-72, 38-101, and  
2 38-102 is presumed to be in violation until such time as that documentation is provided.

3  
4 ~~Effective November 19, 2003 the water~~ Water surface elevation means the height, in relation to the  
5 ~~National American Vertical Datum of 1988 ( NAVD '88)~~ National Geodetic Vertical Datum (NGVD) of  
6 ~~1929 (or other datum where specified), of for~~ floods of various magnitudes and frequencies in the  
7 floodplains of riverine areas.

8  
9 (Ord. No. 88-46, § 5, 12-27-88)

10  
11  
12 Cross references: Definitions generally, § 1-2.

13  
14  
15 Sec. 38-33. Penalty for violation of article.

16  
17 Except as otherwise provided in this article, violations of this article are punishable as provided in section  
18 1-6.

19  
20 (Ord. No. 88-46, § 10, 12-27-88)

21  
22  
23 Sec. 38-34. Interpretation of article and conflicting provisions.

24  
25 The regulations, restrictions and requirements of this article shall be held to be the minimum standards to  
26 carry out the purpose of this article. This article is not intended to interfere with, abrogate, or annul any  
27 easement, covenant or other agreement between parties or other valid ordinances. Where this ordinance  
28 imposes a greater restriction upon the use of land or building, or upon the height and method of  
29 construction of a building than is imposed by other rules, regulations, easements, covenants, agreements or  
30 ordinances, the provisions of this article shall control.

31  
32 (Ord. No. 88-46, § 3, 12-27-88)

33  
34  
35 Sec. 38-35. Methods and provisions for achieving purpose of article.

36  
37 In order to accomplish its purpose, this article includes methods and provisions for:

38  
39 (1) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or  
40 erosion hazards; or which result in damaging increases in erosion or in flood heights or velocities.

41  
42 (2) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected  
43 against flood damage at the time of initial construction.

1 (3) Controlling the alteration of natural floodplains, stream channels, and natural protective barriers,  
2 which help accommodate or channel floodwaters.

3  
4 (4) Controlling, filling, grading, and other development which may increase flood damage.

5  
6 (5) Preventing or regulating the construction of flood barriers which will unnaturally divert floodwaters  
7 or which may increase flood hazards in other areas.

8  
9 (Ord. No. 88-46, § 4, 12-27-88)

10  
11  
12 Secs. 38-36--38-70. Reserved.

13  
14  
15 Sec. 38-71. Floodplain administrator; creation of position; duties and responsibilities.

16  
17 (a) There is hereby created by ~~the County~~ ~~county in conjunction with the City of Albuquerque~~ the  
18 position of county floodplain administrator to administer and implement this article by granting or denying  
19 development permit applications in accordance ~~all Bernalillo County and State of New Mexico codes,~~  
20 ~~rules, ordinances and statutes with its provisions.~~

21  
22 (b) The floodplain administrator shall enforce this article, and, in addition thereto and in furtherance  
23 thereof, ~~he~~ shall:

24  
25 (1) Review all applications for development permits to determine:

26  
27 a. That the permit requirements of this article have been satisfied.

28  
29 b. That all necessary permits have been obtained from those federal, state or local governmental  
30 agencies from which prior approval is required.

31  
32 c. Whether or not the proposed development adversely affects the flood-carrying capacity of the area of  
33 special flood hazard. For the purpose of this article the expression "adversely affects" means damage to  
34 adjacent properties because of rises in flood stages attributed to physical changes of the channel, arroyo and  
35 adjoining areas.

36  
37 1. If it is determined that there is no adverse effect, then the permit shall be granted consistent with the  
38 provisions of this article.

39  
40 2. If it is determined that there is an adverse effect, then flood damage mitigation measures shall be made  
41 a condition of the permit.

42  
43 (2) Obtain, review and reasonably utilize any base flood elevation data and floodway data available from  
44 a federal, state or other source until base flood elevation data is made available by the Federal Insurance  
45 Administrator, in order to carry out the provisions of this article.



1  
2 (3) Obtain and maintain records of the actual elevation, in relation to mean sea level, of the lowest  
3 habitable floor, including the basement, of all new or substantially improved structures.  
4

5 (4) Obtain and maintain records of actual elevations, in relation to mean sea level, to which structures  
6 have been floodproofed and keep the floodproofing certifications required by this article.  
7

8 (5) Notify adjacent communities, the state and other affected agencies prior to any alterations or  
9 relocations of a watercourse, and submit evidence of such notification to the Federal Insurance  
10 Administrator.  
11

12 (6) Require that maintenance is provided within the altered or relocated portion of said watercourse so  
13 that the flood-carrying capacity is not diminished.  
14

15 (7) Make interpretations and determine, when needed, the exact location of the boundaries of the areas of  
16 special flood hazards in case of conflict between a boundary shown on the flood hazard boundary map and  
17 actual field conditions.  
18

19 (8) Review all subdivision proposals in special flood hazard areas for compliance with the provisions of  
20 this article.  
21

22 (Ord. No. 88-46, § 9(A), (B), 12-27-88)  
23  
24

25 Sec. 38-72. Development permits.  
26

27 (a) A development permit shall be obtained before construction of development begins within any area  
28 of special flood hazard as shown on the flood insurance rate map.  
29

30 (b) An application for a development permit (same as building permit) shall be made to the county  
31 building section. The applicant shall submit to the county administrator plans drawn to scale showing the  
32 nature, location, dimensions and elevations of the area to be developed, existing and/or proposed structures,  
33 fill, storage of materials, drainage facilities and the location of the foregoing.  
34

35 (c) The plans mentioned in subsection (b) of this section shall specifically include the following  
36 information:  
37

38 (1) Elevation, in relation to mean sea level, of the lowest floor, including the basement, of all structures.  
39

40 (2) Elevation, in relation to mean sea level, to which any structure has been floodproofed.  
41

42 (3) Certification by a registered professional engineer that the floodproofing methods for any  
43 nonresidential structure meet the floodproofing criteria set forth in section 38-102(2)c.  
44

1 (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed  
2 development.

3  
4 (d) Fees. An application for a development permit shall be accompanied by a filing fee in accordance  
5 with the following schedule:

6  
7 (1) Twenty dollars for new buildings of 1,000 square feet or more, or additions of 1,000 square feet or  
8 more to existing buildings.

9  
10 (2) Ten dollars for new buildings of less than 1,000 square feet, additions of less than 1,000 square feet  
11 to existing buildings, or for the erection of structures other than buildings.

12  
13 (Ord. No. 88-46, § 6, 12-27-88)

14  
15  
16 Sec. 38-73. Variances and appeals.

17  
18 (a) In passing upon applications for variances and appeals, the county floodplain administrator shall  
19 consider all technical evaluations, all relevant factors, standards specified in other sections of this article  
20 and:

21  
22 (1) The danger that materials may be swept onto other lands to the injury of others;

23  
24 (2) The danger of life and property due to flooding or erosion damage;

25  
26 (3) The susceptibility of the proposed facility and its contents to flood damage and the effect of such  
27 damage on the individual owner;

28  
29 (4) The importance of the services provided by the proposed facility to the community;

30  
31 (5) The availability of alternative locations for the proposed use which are not subject to flooding or  
32 erosion damage;

33  
34 (6) The compatibility of the proposed use with existing and anticipated development;

35  
36 (7) The relationship of the proposed use to the comprehensive and floodplain management program of  
37 that area;

38  
39 (8) The safety of access to the property in times of flood for ordinary and emergency vehicles;

40  
41 (9) The expected heights, velocities, duration, rate of rise, and sediment transport of the floodwaters and  
42 the effects of wave action, if applicable at the site; and  
43

1 (10) The costs of providing governmental services during and after flood conditions, including  
2 maintenance and repair of public facilities such as sewer, gas, electrical, water system, and streets and  
3 bridges.

4  
5 (b) The county floodplain administrator shall maintain the records of all appeal actions, including  
6 technical information, and report any variances to the Federal Insurance Administration upon request.

7  
8 (c) Conditions for a variance are as follows:

9  
10 (1) Generally, variances may be issued for new construction and substantial improvements to be erected  
11 on a lot of one-half acre or less in size, contiguous to, and surrounded by, lots with existing structures  
12 constructed below the base flood level, and not in a designated floodway, providing items in subsection (a)  
13 of this section have been fully considered. As the lot size increases beyond the one-half acre, the technical  
14 justification required for issuing the variances increases.

15  
16 (2) Variances may be issued for the reconstruction, rehabilitation or restoration of structures listed on the  
17 state cultural properties register, without regard to the procedures set forth in the remainder of this division.

18  
19 (3) Variances shall not be issued within any designated floodway if any increase in flood levels or  
20 adverse realignment during the base flood discharge would occur as a result of allowing such discharge  
21 variances.

22  
23 (4) Variances shall only be issued upon a determination that the variance is the minimum penalty,  
24 considering the flood hazard, to afford relief.

25  
26 (Ord. No. 88-46, § 9(C), (D), 12-27-88)

27  
28  
29 Secs. 38-74--38-100. Reserved.

30  
31  
32 Sec. 38-101. General standards.

33  
34 For development in all areas of special flood hazards, the following standards must be complied with:

35  
36 (1) Anchoring. All new construction or substantial improvements shall be designed or modified and  
37 adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from  
38 hydrodynamic and hydrostatic loads, including the effects of buoyancy.

39  
40 (2) Construction materials and methods. All new construction and substantial improvements shall be  
41 constructed:

42  
43 a. With materials and utility equipment resistant to flood damage; and

44  
45 b. Using methods and practices that minimize flood damage.

1  
2 (3) Utilities.  
3

4 a. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration  
5 of floodwaters into the system.  
6

7 b. New and replacement sanitary sewerage systems shall be designed to minimize or eliminate  
8 infiltration of floodwaters into the systems and discharge from the systems into floodwaters.  
9

10 c. Onsite waste disposal systems shall be located to avoid impairment to them or contamination from  
11 them during flooding.  
12

13 All new construction or substantial improvements shall be constructed with electrical, heating, plumbing,  
14 ventilation and air conditioning equipment, and other service facilities that are designed and/or located so  
15 as to prevent water from entering or accumulating within the components during conditions of flooding.  
16

17 (4) Subdivision proposals in special flood hazard areas. Subdivision proposals in special flood hazard  
18 areas shall conform to the following:  
19

20 a. All subdivision proposals shall be consistent with the need to minimize flood damage.  
21

22 b. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical and  
23 water systems located and constructed to minimize flood damage.  
24

25 c. All subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.  
26

27 d. Base flood elevation data shall be provided for subdivision proposals and other proposed development  
28 which contain at least 50 lots or five acres, whichever is less.  
29

30 (5) Floodways. Located within areas of special flood hazard established by the Federal Emergency  
31 Management Agency (FEMA) in the report entitled "The Flood Insurance Study for Albuquerque and  
32 Bernalillo County," dated March 15, 1983, September 30, 1996, April 2, 2002, November 19, 2003, or any  
33 other subsequent study, are areas designated as floodways. Since the floodway is an extremely hazardous  
34 area due to the velocity of floodwaters which carry debris, potential projectiles and erosion potential, the  
35 following provisions shall apply:  
36

37 a. Encroachments are prohibited, including fill, new construction, substantial improvements and other  
38 developments unless certification by a registered professional engineer is provided demonstrating that  
39 encroachments shall not result in any increase in flood levels during occurrence of the base flood discharge.  
40

41 b. If subsection (5)a of this section is satisfied, all new construction and substantial improvements shall  
42 comply with all applicable flood hazard reduction provisions of this section.  
43

44 c. Prohibit placement of any mobile homes, except which meet the requirements of section 38-102(4).  
45

(6) Standards of areas of shallow flooding (AO and AH zones). Located within the areas of special flood hazard established by "The Flood Insurance Study for Albuquerque and Bernalillo County," dated March 15, 1983, September 30, 1996, April 2, 2002, November 19, 2003, or any other subsequent study, are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. Therefore, the following provisions apply:

- a. All new construction and substantial improvements of residential structures must have the lowest floor, including the basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the county flood insurance rate map (at least two feet if no depth number is specified).
- b. All new construction and substantial improvements of nonresidential structures must:
  1. Have the lowest floor, including the basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the county flood insurance rate map (at least two feet if no depth is specified); or
  2. Together with attendant utilities and sanitary facilities be designated so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water and with structure components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.
- c. A registered professional engineer shall submit a certification to the county floodplain administrator that the standards of this section, as proposed in section 38-102(1), (2) and (3) are satisfied.
- d. Require within zones AH and AO, adequate drainage paths around structures on slopes, to guide floodwaters around and away from proposed structures.

(Ord. No. 88-46, § 7, 12-27-88)

#### Sec. 38-102. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided, the following specific standards apply:

- (1) Residential construction. New construction and substantial improvements of any residential structure shall have the lowest floor, including the basement, elevated to or above the base flood elevation.
- (2) Nonresidential construction. New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including the basement, elevated to or above the base flood elevations, or it, together with attendant utility and sanitary facilities shall:

1 a. Be floodproofed so that below the base flood level the structure is watertight with walls substantially  
2 impermeable to the passage of water;

3  
4 b. Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of  
5 buoyancy; and

6  
7 c. Be certified by a registered professional engineer that the standards of this subsection are satisfied.  
8

9 (3) Enclosures. New construction and substantial improvements, with fully enclosed areas below the  
10 lowest floor that are subject to flooding, shall be designed automatically to equalize hydrostatic flood  
11 forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this  
12 requirement must either be certified by a registered professional engineer, or meet or exceed the following  
13 minimum criteria:

14  
15 a. A minimum of two openings having a total net area of not less than one square ~~inch~~<sup>foot</sup> for every  
16 square foot of enclosed area subject to flooding shall be provided.

17  
18 b. The bottom of all openings shall be no higher than one foot above grade.

19  
20 c. Openings may be equipped with screens, louvers, valves or other coverings or devices, provided that  
21 they permit the automatic entry and exit of floodwaters.  
22

23 (4) Manufactured homes.  
24

25 a. All manufactured homes to be placed within zone A shall be installed using methods and practices  
26 which minimize flood damage. For the purpose of this subsection, manufactured homes must be elevated  
27 and anchored to resist flotation, collapse or lateral movement. Methods of anchoring may include, but are  
28 not limited to, use of over-the-top or frame ties to ground anchors. This requirement is in addition to  
29 applicable state and local anchoring requirements for resisting wind forces.  
30

31 b. All manufactured homes shall be in compliance with subsection (1) of this section.  
32

33 c. Require that all manufactured homes to be placed or substantially improved within zones A1-30 and  
34 AH on the community's FIRM be elevated on a permanent foundation such that the lowest floor of the  
35 manufactured home is at or above the base flood elevation; and be securely anchored to an adequately  
36 anchored foundation system in accordance with the provision of subsection (4)a of this section.  
37

38 (Ord. No. 88-46, § 8, 12-27-88)  
39

40  
41 Secs. 38-103--38-140. Reserved.  
42

43  
44 Sec. 38-141. Purpose and intent of article.  
45

1 It is the purpose of this article to promote the public health, safety and general welfare, and to minimize  
2 public and private losses due to flooding by provisions designed:  
3

4 (1) To establish policies, procedures, criteria and requirements to complement and to supplement article  
5 II of this chapter for the assistance and guidance of county officials, county staff and all persons and  
6 entities within the jurisdiction of the county.  
7

8 (2) As to flood control, to:  
9

- 10 a. Prevent the loss of or injury to human life.  
11  
12 b. Minimize flood damages to public and private property.  
13  
14 c. Provide for timely and effective construction and maintenance of flood control facilities.  
15

16 (3) As to storm drainage, to:  
17

- 18 a. Prevent the creation of public safety hazards and seek to eliminate existing problems.  
19  
20 b. Prevent, to the extent feasible, the discharge of storm runoff from public facilities onto private  
21 property.  
22  
23 c. Prevent the increased risk of damage to private property caused by storm runoff from other private  
24 property.  
25  
26 d. Coordinate with the MRGCD, AMAFCA and the City of Albuquerque the discharge of storm runoff  
27 into MRGCD and AMAFCA facilities and minimize impact on downstream facilities.  
28  
29 e. Provide a reasonable level of public health and convenience at reasonable cost.  
30  
31 f. Provide for timely and effective construction and maintenance of storm drainage facilities.  
32  
33 g. Design storm drainage facilities, which provide effective storm drainage and flood, control protection  
34 as well as promote quality of life and further other adopted county policies, including development of  
35 multiple use drainage facilities.  
36  
37 h. Improve the quality of storm runoff  
38

39 (4) As to erosion control, to:  
40

- 41 a. Protect the hydraulic capacity of flood control and storm drainage facilities from losses due to  
42 sedimentation and degradation.  
43  
44 b. Preserve public health, safety and convenience from jeopardy due to erosion and sedimentation in  
45 private and public facilities of all types.

1  
2 c. Preserve the quality of surface runoff.  
3

4 (Ord. No. 03-1, 1-14-03)  
5  
6

7 Sec. 38-142. Definitions.  
8

9 The following words, terms and phrases, when used in this article, shall have the meanings ascribed to  
10 them in this section, except where the context clearly indicates a different meaning:  
11

12 AMAFCA means the Albuquerque Metropolitan Arroyo Flood Control Authority.  
13

14 BMP means best management practice. Best management practices are schedules of activities, prohibitions  
15 or practices, maintenance procedures and other management practices to prevent or reduce the pollution of  
16 waters of the United States. BMPs also include treatment requirements, operating procedures, and practices  
17 to control runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage. With  
18 regard to construction these practices may include structural devices or nonstructural practices that are  
19 designed to prevent pollutants from entering water or to direct the flow of water.  
20

21 Board of adjustment means board of adjustment as defined in the comprehensive zoning ordinance of the  
22 county, as may be amended from time to time.  
23

24 Channel means any arroyo, stream, swale, ditch, diversion or watercourse that conveys storm runoff,  
25 including manmade facilities.  
26

27 Channel stability means a condition in which a channel neither degrades to the degree that structures,  
28 utilities or private property are endangered, nor aggrades to the degree that flow capacity is significantly  
29 diminished as a result of one or more storm runoff events or moves laterally to the degree that adjacent  
30 property is endangered.  
31

32 Channel treatment measure means a physical alteration of a channel for any purpose.  
33

34 City means the City of Albuquerque.  
35

36 Comprehensive plan means the Albuquerque/Bernalillo County Comprehensive Plan and amendments  
37 thereto.  
38

39 Conceptual grading and drainage plan means a plan prepared in graphical format showing existing and  
40 proposed grading, drainage, control, flood control and erosion control information in sufficient detail to  
41 determine project feasibility.  
42

43 Conservancy district engineer means the MRGCD's engineer or appointed representative.  
44



1 County engineer means the engineering manager of the engineering division of the county public works  
2 department or his designee.

3  
4 County surface water hydrologist means a staff professional engineer designated by the county engineer to  
5 exercise primary responsibility for drainage control, flood control and erosion control matters assigned to  
6 the office of the county engineer.

7  
8 Design storm means a storm which deposits a stated amount of precipitation within a stated period over a  
9 defined area and which is used in calculating storm runoff and in designing drainage control, flood control  
10 and erosion control measures.

11  
12 Developed land means any lot or parcel of land occupied by any structure intended for human occupation,  
13 including structures intended for commercial enterprise.

14  
15 Developer means any individual, estate, trust, receiver, cooperative association, club, corporation,  
16 company, firm, partnership, joint venture, syndicate or other entity engaging in the platting, subdivision,  
17 filling, grading, excavating or construction of structures or facilities.

18  
19 Downstream capacity means the ability of downstream major facilities to accept and safely convey runoff  
20 generated upstream from the 100-year design storm.

21  
22 Drainage means storm drainage.

23  
24 Drainage covenant means a legal document executed between a real property owner and the county and, in  
25 general, identifies, addresses and defines a drainage facility or facilities, maintenance, county's right of  
26 entry, demand for removal or repair, failure to perform by owner and emergency work by county, liability  
27 of county, indemnification, cancellation of agreement and release of covenant, assessments, notification,  
28 term, binding of property, changes and severability. The drainage covenant shall be in a form provided by  
29 the county.

30  
31 Drainage management or treatment means the treatment and/or management of surface runoff from all  
32 storms up to and including a ten-year design storm.

33  
34 Drainage management plan means a plan prepared and adopted by the county, city or AMAFCA which  
35 details the drainage controls required within a particular watershed, arroyo corridor or other designated  
36 drainage district. The drainage management plan shall comply with an arroyo corridor plan if one has been  
37 adopted.

38  
39 Drainage plan means a short, detailed plan prepared in graphical format with or on a detailed grading plan  
40 addressing onsite and off-site drainage control, flood control and erosion control issues for lots or parcels of  
41 less than five acres.

42  
43 Drainage report means a comprehensive analysis of the drainage, flood control and erosion control  
44 constraints on and impact resulting from a proposed platting, development or construction project.

45

1 Drainage right-of-way means a public right-of-way acquired whether in fee or in easement, by the city,  
2 county, AMAFCA, the MRGCD, or the state for the primary purpose of handling storm drainage.

3  
4 East Mountain Area means that portion of the county between the eastern limit of the county and the  
5 eastern limit of the city, which is more particularly described as that portion of the county east of the east  
6 line of Township 4 East of the New Mexico Principal Meridian and as such line is projected through land  
7 grant boundaries (being 24 miles east of the New Mexico Principal Meridian).

8  
9 EPA means United States Environmental Protection Agency.

10  
11 Erosion control means treatment measures for the prevention of damages due to soil movement and to  
12 deposition.

13  
14 Erosion control plan means a plan for the mitigation of damages due to soil erosion and to deposition.

15  
16 Flood control means the treatment measures necessary to protect life and property from the 100-year design  
17 storm runoff.

18  
19 Flood hazard area means an area subject to inundation from the 100-year design storm runoff.

20  
21 Floodway means the channel of a river, arroyo or other watercourse and adjacent land areas that must be  
22 reserved in order to safely discharge the 100-year design storm runoff.

23  
24 Freeboard means that part of the drainage channel that is designed to contain the wave action of the 100-  
25 year design storm.

26  
27 Fully developed watershed means a hydrologic condition in which all areas upstream and downstream of a  
28 point in question are assumed completely developed, including any undeveloped areas which are assumed  
29 to be developed in accordance with mid-range development densities as established by the comprehensive  
30 plan, appropriate area plans or sector plans, adopted facilities master plans and the hydraulic and  
31 hydrologic standards established by this article.

32  
33 Grading plan means a plan describing the existing topography and proposed grading, including retaining  
34 wall locations and details, interfaces with adjacent properties, streets, alleys and channels, referenced to  
35 mean sea level (1929 or 1988 datum) such as city benchmark or NMSHTD benchmark, and showing  
36 sufficient contours, spot elevations and cross sections to allow a clear understanding by reviewers,  
37 contractors and inspectors.

38  
39 Maintenance means the cleaning, shaping, grading, repair and minor replacement of drainage, flood control  
40 and erosion control facilities, but not including the cost of power consumed in the normal operation of  
41 pump stations.

42  
43 Major arroyo means any channel whose watershed exceeds 320 acres in a 100-year design storm, whether  
44 such watershed is in its natural or unaltered state or has been altered by development, runoff diversions or  
45 detention facilities.

1  
2 Major facility means any facility, including a street or alley, which would collect, divert or convey a peak  
3 discharge of more than 50 cubic feet per second (50 cfs) or store two acre-feet or more of runoff in the  
4 event of a 100-year design storm.  
5

6 Master planned facility means any drainage control, flood control or erosion control facility recommended  
7 in the Albuquerque Master Drainage Plan (1981), amendments thereto, or any voter approved general  
8 obligation bond financed drainage control, flood control or erosion control facility.  
9

10 Minor facility means any facility which would collect, divert or convey a peak discharge of 50 cubic feet  
11 per second (50 cfs) or less, or store less than two acre-feet of runoff in the event of the 100-year design  
12 storm.  
13

14 MRGCD means the Middle Rio Grande Conservancy District.  
15

16 Multiple use facility means a drainage control, flood control or erosion control facility in which other  
17 secondary uses are planned or allowed including, but not limited to, recreation, open space, transportation  
18 and utility location.  
19

20 NOI means notice of intent.  
21

22 NPDES Phase II means National Pollution Discharge Elimination System, Phase II.  
23

24 Nuisance waters means those waters leaving a site and entering a public street, which do not result from  
25 precipitation, such as landscape overwatering or car washing.  
26

27 100-year design storm means that storm whose precipitation within a six-hour period and resulting runoff  
28 has a one percent chance of being equaled or exceeded in any given year. A special condition may  
29 require/allow use of storms of longer duration.  
30

31 Project design swale (drainage ditch, borrow ditch or bar ditch) means a swale or ditch parallel to the  
32 driving surface to convey stormwater runoff from the street right-of-way.  
33

34 Prudent line (erosion limit line) means that line which will not be disturbed by erosion, scour or  
35 meandering of a natural (unlined) arroyo, channel or watercourse over a period of 30 years and which will  
36 not be disturbed by a 100-year storm occurring at any time during the 30-year period. The prudent line shall  
37 be so located as to include all freeboard required to contain the wave action of the 100-year design storm.  
38

39 Storm drainage system means arroyos, storm drains, roadways, culverts, bar ditches, ponds, pump stations,  
40 dams, detention ponds, retention ponds, inlets and appurtenant structures and other facilities which convey  
41 stormwater.  
42

43 Stormwater means storm water runoff, which is flow on the surface or in the subsurface that percolates  
44 from the ground resulting from precipitation.  
45

1 Stormwater pollution prevention plan means the information and program required by EPA, NMED and/or  
2 the county for construction phase stormwater management.

3  
4 Stormwater quality control means the treatment methods necessary to protect and enhance the quality of  
5 stormwater.

6  
7 Temporary drainage facility means a nonpermanent drainage control, flood control or erosion control  
8 facility constructed as part of a phased project or to serve until such time that a permanent facility is in  
9 place including, but not limited to, desilting ponds, berms, diversions, channels, detention ponds, retention  
10 ponds, bank protection and channel stabilization measures.

11  
12 Ten-year design storm means that storm whose precipitation within a six-hour period and resulting runoff  
13 has a ten percent chance of being equaled or exceeded in any given year. A special condition may  
14 require/allow use of storms of longer duration.

15  
16 Urbanized area means that area identified in the most current US Census as having a population in excess  
17 of 50,000 persons, or a density of 1,000 persons per acre or greater.

18  
19 Watercourse means any river, creek, arroyo, canyon, draw or wash, or any other channel having definite  
20 banks and bed with visible evidence of the occasional flow of water.

21  
22 Zoning administrator means the official designated to enforce the county comprehensive zoning ordinance,  
23 as may be amended from time to time.

24  
25 (Ord. No. 03-1, 1-14-03)

26  
27  
28 Sec. 38-143. Violations of article; procedures for remedy; penalty.

29  
30 (a) Notice of violation; noncompliance; abatement by county; lien. Where, after investigation, a notice  
31 has been issued by the county engineer to the owner of the property on which a violation has occurred and  
32 the order is not complied with, within such reasonable time as may be prescribed by the county engineer, or  
33 if the responsible party or violator cannot be found or determined, the county engineer may cause such  
34 remedies as are necessary to be made. The reasonable cost of such remedies shall constitute a lien against  
35 the property on which the violation occurred and was remedied. The lien shall be imposed and foreclosed  
36 in the manner provided in NMSA 1978, secs. 3-36-1--3-36-6.

37  
38 (b) Notice of violation; noncompliance; abatement by county; other remedies. Where, after investigation,  
39 a notice has been issued by the county engineer to the owner of the property on which a violation has  
40 occurred and the order is not complied with, within such reasonable time as may be prescribed by the  
41 county engineer, the county may revoke or refuse to renew or issue any permit to the violator and/or the  
42 property owner until such remedies as are necessary are made, or if remedy is made by the county, until the  
43 cost of such remedies is paid to the county.

1 (c) Service of notice; publication; right to appeal. It shall be sufficient notice under the provisions of this  
2 section to make delivery of such notices by registered mail. If the name and address of the owner cannot be  
3 reasonably ascertained from the current county tax rolls and the premises are unoccupied, it shall be  
4 sufficient notice under this section to publish the notice in English in a newspaper of general circulation in  
5 the county once a week for four consecutive weeks. The owner of the property shall have the right to  
6 appeal pursuant to section 38-172.

7  
8 (d) Penalty. Except as otherwise provided in this article, violations of this article are punishable as  
9 provided in section 1-6.

10  
11 (Ord. No. 03-1, 1-14-03)

12  
13  
14 Sec. 38-144. Interpretation of article.

15  
16 In the interpretation and application of this article, all provisions shall be:

- 17  
18 (1) Considered as minimum requirements;  
19  
20 (2) Liberally construed in favor of the county;  
21  
22 (3) Deemed neither to limit nor repeal any other powers granted under state statutes; and  
23  
24 (4) Deemed not to limit any ordinance unless expressly stated herein.

25  
26 (Ord. No. 03-1, 1-14-03)

27  
28  
29 Sec. 38-145. Warning and disclaimer of liability.

30  
31 The degree of flood protection required by this article is considered reasonable for regulatory purposes and  
32 is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions.  
33 Flood heights may be increased by manmade or natural causes. This article does not imply that land outside  
34 flood hazard areas or uses permitted within such areas will be free from flooding or flood damages. This  
35 article shall not create liability on the part of the county or on any officer or employee of the county for any  
36 flood damages that result from reliance on this article or any administrative decision lawfully made under  
37 this article.

38  
39 (Ord. No. 03-1, 1-14-03)

40  
41  
42 Sec. 38-146. Jurisdiction of article.

43 This article shall apply to all unincorporated lands within the county with respect to site development, land  
44 use changes, building permits, major or minor subdivisions, or replatting matters.

1 NPDES Phase II requirements for post-construction stormwater quality controls shall apply in the  
2 urbanized area of the county.

3  
4 This article shall not apply to federal lands and reservations, and the city. This jurisdiction is not exclusive.  
5 In particular AMAFCA and the MRGCD, where applicable, share jurisdiction in matters of flood control  
6 and stormwater quality.

7  
8 (Ord. No. 03-1, 1-14-03)  
9

10  
11 Sec. 38-147. Stormwater quality protection.  
12

13 (a) Construction phase stormwater quality protection. For all construction, development and  
14 redevelopment projects with land disturbances equal to or greater than one acre, including sites which  
15 disturb less than one acre but are part of a larger common plan of development, a stormwater pollution  
16 prevention plan in accordance with EPA NPDES Phase II regulations for construction site storm water  
17 runoff control and certification that a notice of intent has been submitted to the EPA shall be submitted to  
18 the county engineer, prior to the issuance of a grading or paving permit. This requirement is in addition to  
19 any other provisions of this article that may apply.  
20

21 The stormwater pollution prevention plan shall outline the BMPs to be undertaken by the operator/owner of  
22 the project to protect stormwater quality during the construction phase of the project. These BMPs shall be  
23 maintained by the owner of the property. Inspection of these BMPs shall be made at a minimum once a  
24 week by the owner, and a log of this inspection shall be kept on-site for review by the county engineer. The  
25 county shall also inspect these BMPs on a periodic basis. These BMPs shall be subject to the approval of  
26 the county engineer.  
27

28 (b) Post-construction stormwater quality protection. For all development and redevelopment projects  
29 with land disturbances equal to or greater than one acre, including sites which disturb less than one acre but  
30 are part of a larger common plan of development, that discharge into the county's storm drainage system,  
31 within the urbanized area of the county, post construction water quality BMPs are required. This  
32 requirement is in addition to any other requirements that may apply. These BMPs shall be subject to the  
33 approval of the county engineer.  
34

35 Maintenance responsibility of stormwater quality control facilities is the responsibility of the property  
36 owner up to the point where stormwater enters public facilities.  
37

38 (Ord. No. 03-1, 1-14-03)  
39

40  
41 Secs. 38-148--38-170. Reserved.  
42

43  
44 Sec. 38-171. Generally.  
45

1 (a) The design, construction and maintenance of all drainage control, flood control, erosion control and  
2 stormwater quality control facilities within the county shall be performed in accordance with procedures,  
3 criteria and standards formulated by the county engineer and in accordance with the policies established in  
4 this article or an adopted drainage management plan.

5  
6 (b) All construction activities within the jurisdiction of the county shall conform to the requirements of  
7 the county engineer with respect to drainage control, flood control, erosion control and stormwater quality  
8 control. Original construction and modifications and/or additions to existing structures are excluded when  
9 they constitute less than 500 square feet, in plain view, or the county engineer determines will not adversely  
10 affect other properties, arroyos, watercourses, or easements, by finding that the property of the proposed  
11 development is not within a designated 100-year floodplain as shown on the National Flood Insurance  
12 Program's flood insurance rate maps, and the proposed development will not alter, block or divert any  
13 arroyos, watercourses or swales.

14  
15 (1) Construction, grading or paving on any lot within the jurisdiction of the county shall not increase the  
16 damage potential to upstream, downstream or adjacent properties or public facilities. Damages shall be  
17 defined as those caused by flooding, erosion and sedimentation from the 100-year design storm and all  
18 smaller storms.

19  
20 (2) During the months of July, August or September, any grading within or adjacent to a watercourse  
21 defined as a major facility shall provide for erosion control and the safe passage of the ten-year design  
22 storm runoff during the construction phase and until the permanent improvements are completed.

23  
24 (3) Grading, cut, fill or importation of material in excess of 500 cubic yards or grading of any area of one  
25 acre or more, or any grading which will adversely affect other properties, arroyos, watercourses or  
26 easements shall conform to drainage control, flood control, erosion control and stormwater quality control  
27 policies and to standards, criteria and procedures established by the county engineer with respect to  
28 drainage, flood control, erosion control and stormwater quality control. A grading permit, issued by the  
29 county engineer, shall be required for projects involving more than 500 cubic yards of material or one acre  
30 or more in area. Applications for development of areas known to have been sanitary landfills shall be  
31 accompanied by a report which discusses potential health and soil mechanics problems and their solutions.  
32 Such reports shall be prepared by a state professional engineer competent in soil mechanics. The  
33 application processing fee and the grading permit fee shall be as shown in the attached fee schedule. Any  
34 fees applicable under this article shall be reviewed from time to time by the county manager and any  
35 changes to these fees shall be made by resolution of the board of county commissioners. The issuance of a  
36 grading permit by the county engineer does not relieve the owner/developer from obtaining any additional  
37 grading or fill permits that may be required by other county departments, agencies or governmental bodies.

38  
39 (4) Paving an area larger than 1,000 square feet shall require a paving permit. Applications for paving  
40 permits shall be accompanied by a drainage plan if deemed necessary by the county engineer. Repaving of  
41 existing paved areas in which no grading is planned is excluded. The application processing fee and the  
42 paving permit fee shall be as shown in the attached fee schedule.

43  
44 (5) The county engineer shall not issue a grading or paving permit unless the proposed grading or paving  
45 is in compliance with the policies of this article and the standards and criteria of the county engineer, as

1 provided for by section 38-173. All construction activities within MRGCD land or rights-of-way shall  
2 conform to the requirements of the conservancy district engineer of the MRGCD.  
3

4 (c) The county may participate with the private sector, other public bodies, and agencies operating within  
5 the jurisdiction of this policy in order to accomplish the goals and implement the policies adopted in this  
6 article. This includes, but shall not be limited to, the development and adoption of master plans,  
7 participation in the construction of projects, and exercising control through the planning, platting, zoning  
8 and permitting processes.  
9

10 (d) It shall be the responsibility of the county engineer to produce, approve, make and retain records of  
11 all drainage plans, drainage reports, design analyses, design drawings, as-built drawings and maintenance  
12 schedules related to all drainage control, flood control, erosion control and stormwater quality control  
13 facilities constructed within county rights-of-way or easements.  
14

15 (e) Application for all land use changes shall address drainage control, flood control, and erosion control  
16 in terms of the interaction of these parameters with other requirements and needs produced by the proposed  
17 land use changes, and shall comply with an adopted drainage management plan.  
18

19 (f) Requests for building permits, site plan approval, or the platting of land for the purpose of major or  
20 minor subdivisions, and for replats, shall be accompanied by appropriate grading, drainage control, flood  
21 control, erosion control and stormwater quality control information. Drainage information requirements for  
22 building permits will be waived where a drainage report meeting the requirements of this article have been  
23 previously approved by the county or AMAFCA, and a copy of such report is filed with the county  
24 engineer. Drainage information requirements for bulk land plats will be waived, provided that plat language  
25 indicates that drainage information, meeting the requirements of this article and AMAFCA, if applicable,  
26 will be submitted prior to any subdivision.  
27

28 (g) The county engineer shall not approve any plan or report pertaining to proposed construction, platting  
29 or other development where the proposed activity or change in the land affected would result in  
30 downstream capacity being exceeded. Downstream capacity is determined based on the assumption of fully  
31 developed watersheds. This assumption prevents the first come, first served approach where downstream  
32 development unduly constrains upstream development. Parameters used in the determination of  
33 downstream capacity include, but are not limited to:  
34

35 (1) Channel stability and location of prudent line.  
36

37 (2) Crossing structure hydraulic capacity  
38

39 (3) Reservoir capacity.  
40

41 (4) Hydraulic capacity of street, storm sewer or channel.  
42

43 (5) Public safety.  
44

45 (6) Maintenance constraints.



1  
2 Planned public storm drainage facilities are assumed as in place in determining downstream capacity,  
3 provided that construction funds are available and design has progressed to the point where capacity can be  
4 ascertained.

5  
6 (h) Temporary facilities are only allowed and/or required on a case-by-case basis as determined by the  
7 county engineer. The level of protection to be provided by temporary facilities shall be determined by  
8 considering:

9  
10 (1) The likelihood and consequences of a failure.

11  
12 (2) Length of time until permanent facilities will be in place.

13  
14 The acceptance by the developer of maintenance responsibilities and legal liabilities.

15  
16 (i) Requests for approvals of site development plans, building permits, major or minor subdivisions or  
17 replatting proposals to the county engineer shall be accompanied by drainage control, flood control and  
18 erosion control information and/or commitments. The particular nature, location and scope of the proposed  
19 development defines the degree of detail. One or more of the following levels of submittal may be required  
20 based on the following:

21  
22 (1) Conceptual grading and drainage plan. A graphic representation of existing and proposed grading,  
23 drainage, flood control and erosion control information. The information should be of sufficient detail to  
24 determine project feasibility. The purposes of this plan are to check the compatibility of the proposed  
25 development within grading, drainage, flood hazard and erosion control constraints as dictated by on-site  
26 physical features as well as adjacent properties, streets, alleys and channels. Modifications to the  
27 comprehensive plan and the development of area plans, sector plans, site development plans and  
28 landscaping plans on tracts of five acres or more are appropriate applications of conceptual grading and  
29 drainage plans.

30  
31 (2) Drainage plan. A short, detailed presentation required for approval of small, simple development  
32 approvals. Drainage plans are prepared with or on the detailed grading plan and address both on-site and  
33 off-site drainage control, flood control and erosion control issues. Drainage plans are required for building  
34 permits, minor subdivision less than six lots, site development plans and landscaping plans for development  
35 involving less than five acres.

36  
37 (3) Drainage report. A drainage report is a comprehensive analysis of the drainage control, flood control  
38 and erosion control constraints on and impacts resulting from a proposed platting, development or  
39 construction project. Drainage reports are required for major subdivisions containing more than five lots or  
40 constituting five acres or more, platting or construction within a designated flood hazard area and for any  
41 platting or development adjacent to a major arroyo.

42  
43 (4) Erosion control plan. An erosion control plan is usually incorporated into the drainage plan or  
44 drainage report. Erosion control plans address all phases of each project from initial grading through and  
45 including final occupancy. The ten-year design storm shall be used to determine the treatment measures

1 necessary for the prevention of damage due to soil movement for the on-site area of development. Where  
2 an arroyo or watercourse abuts or traverses the site of development, or a development or subdivision  
3 proposes to discharge to any arroyo or watercourse, a more stringent criteria, including determination of the  
4 prudent line, may be appropriate and will be determined on a case-by-case basis by the county engineer.  
5 Phased projects require special attention. All construction projects, both public and private, within the  
6 jurisdiction of this article, unless specifically excluded, require an approved erosion control plan prior to  
7 the start of construction. The erosion control plan must address stormwater quality where the land  
8 disturbance is one acre or greater, or is part of a larger common plan of development.

9  
10  
11  
12 (5) Special provisions for East Mountain Area.

13  
14 a. Drainage reports and/or plans will not be required where the tract, lot or parcel is 40 acres or less and  
15 is subdivided into lots, tracts or parcels of five acres or more and is zoned strictly for single-family  
16 dwelling (R-1).

17  
18 b. Drainage reports and/or plans will not be required where the tract, lot or parcel is five acres or less,  
19 and the total impervious area is 15 percent or less of the area of the tract, lot or parcel. The impervious area  
20 shall include all existing improvements, proposed improvements and future improvements if applicable.  
21 Impervious areas are defined as that area not covered by grass or natural vegetation. Dirt, gravel and paved  
22 roads, streets, drives, walks, trails, play areas and areas of human activity shall be considered impervious.  
23 Roofs shall be considered impervious. Landscaping that is underlain by an impervious membrane (plastic)  
24 shall be considered impervious.

25  
26 c. Drainage easements and/or dedicated rights-of-way shall be required for any arroyo, watercourse or  
27 storm drainage facility flowing through or adjacent to any lot, tract or parcel.

28  
29 1. For an upstream drainage basin of ten acres or more, the minimum width of drainage easement or  
30 right-of-way for natural arroyos or watercourses shall include the top of each definable bank of the arroyo  
31 or watercourse and be set back from the top of each bank a horizontal distance equal to 1.2 times the  
32 difference in elevation between the top of each definable bank and the adjacent flowline of the greater. The  
33 minimum width shall be 50 feet. For an upstream drainage basin of ten acres or less the minimum width of  
34 drainage easement or right-of-way for natural arroyos or watercourse shall include the top of each definable  
35 bank of horizontal distance equal to 1.2 times the difference in elevation between the top of each definable  
36 bank and the adjacent flowline of the arroyo or watercourse, or the 100-year floodplain, whichever is  
37 greater. The minimum width shall be 25 feet for natural channels, arroyos or watercourses. It shall be ten  
38 feet for line channels where adequate maintenance and vehicular access is available.

39  
40 2. The minimum width drainage easement or right-of-way for an improved drainage facility shall be  
41 defined as the width necessary to contain a trapezoidal concrete lined channel, having a bottom width of ten  
42 feet and two to one side slopes, designed to convey the full 100-year design storm, including necessary  
43 freeboard and also the outer limits of a maintenance road 12 feet wide on one side of the channel.

44

1 3. The centerline of any arroyo, watercourse or storm drainage facility requiring a drainage easement or  
2 right-of-way shall be located by field survey prior to platting or development.

3  
4 The special provisions for the East Mountain Area are exclusive of the drainage requirements established in  
5 the county street standards (Ordinance No. 88-42).

6  
7 (j) All drainage submittals shall be prepared under the direction of and signed by a registered  
8 professional engineer competent in surface hydrology and drainage, and shall include a statement that the  
9 engineer has personally inspected the land, and a statement as to whether it appears that grading, filling or  
10 excavation has occurred thereon since the existing contour map was prepared.

11  
12 (k) Drainage control considerations specifically address safety, convenience and economics for both  
13 private property and public facilities.

14  
15 (l) The county 100-year design storm is the 100-year six-hour storm as defined by the National Oceanic  
16 Atmospheric Administration (NOAA) and by the storm distributions for time and areas as developed by the  
17 city engineer of the City of Albuquerque, AMAFCA, and the county engineer, as applicable. The 100-year  
18 storm has a one percent probability of occurring in any year. Watersheds with times of concentration  
19 greater than six hours will require the use of the 100-year, 24-hour storm volumes and distributions.  
20 Detention basins with longer than six-hour evacuation times shall use a 24-hour or longer storm volume  
21 and distribution. Design circumstances may require larger or smaller storm frequencies or volumes.  
22 Examples are emergency spillways for dams and erosion control plans, respectively. The sources for  
23 rainfall data are current NOAA publications. When the need for other design storms is apparent, the county  
24 engineer will provide requirements concerning appropriate storms, frequencies and durations.

25  
26 (m) The county engineer shall, within 21 calendar days after the submission to him of a request in  
27 writing for the approval of a plat, development plan, drainage submittal or exemption, approve or deny the  
28 request and mail a copy of his decision to the applicant. If the request is denied, the reasons for such denial  
29 shall be stated in writing. Appeal of such decisions is as provided in section 38-172.

30  
31 (Ord. No. 03-1, 1-14-03)

32  
33  
34 Sec. 38-172. Appeals from county engineer determinations.

35  
36 An appeal of a determination of the county engineer may be made in the manner prescribed in this section:

37  
38 (1) An appeal shall be made in writing and shall be filed in duplicate in the office of the county engineer  
39 on forms provided by the county engineer. Such appeal must set forth specifically wherein it is claimed  
40 there was an error or an abuse of discretion by this action, or where the decision is not supported by  
41 evidence in the matter. A filing fee of \$40.00 shall accompany each appeal. When an appeal is withdrawn,  
42 the filing fee shall not be refunded.

43  
44 (2) Any appeal not filed within 15 days after the rendition in writing of the decision appealed from shall  
45 be dismissed by the board of adjustment.

1  
2 (3) Within ten days after the filing of the appeal, the county engineer shall transmit to the board of  
3 adjustment all papers involved in the proceedings, a copy of his findings and determination relative thereto,  
4 and one copy of the appeal. In addition, he may make and transmit to the board of adjustment such  
5 supplementary report as he may deem necessary to present clearly the facts and circumstances of the case.  
6

7 (4) Upon receipt of the record, the board of adjustment shall set the matter for hearing and give notice by  
8 mail of the time, place and purpose thereof to the appellant, to the county engineer, zoning administrator  
9 and to any interested party who has requested in writing to be so notified. No other notice need be given.  
10

11 (5) Upon hearing of such appeals, the board of adjustment may affirm the change or modify the ruling,  
12 decision or determination appealed from or, in lieu thereof, make such other or additional determination as  
13 shall deem proper in the premises.  
14

15 (6) The decision of the board of adjustment upon the appeal shall be in writing, concurred in by a  
16 majority of the members present of the board of adjustment, which shall forthwith transmit a copy to the  
17 appellant and to the county engineer and zoning administrator. Any decision shall, in all instances, be the  
18 final administrative decision and shall be subject to judicial review as may be provided by law.  
19

20 (Ord. No. 03-1, 1-14-03)  
21  
22

23 Sec. 38-173. Rule change procedures; criteria and standards.  
24

25 (a) Rules concerning procedures, criteria and standards shall be adopted, amended or abolished in  
26 compliance with the policies of this article and as provided by the procedures of this section.  
27

28 (b) Proposed rule changes relating to procedures, criteria and standards pursuant to this article are  
29 initiated by the county engineer, or any person may submit such proposed rule changes to the county  
30 engineer. If a person other than an official of the county submits such a proposal, there may be a processing  
31 fee of up to \$50.00 set by a rule of the county engineer.  
32

33 (c) Prior to the adoption, amendment or repeal of any rule pursuant to this article (hereafter, rule change),  
34 the county engineer shall:  
35

36 (1) Publish summary notice of the proposed rule change and solicit comments in a daily newspaper of  
37 general circulation in the county and also where appropriate in trade, industrial or professional publications  
38 as will reasonably give public notice to an interested person;  
39

40 (2) Send the proposed rule change to all applicable county departments, AMAFCA, the City of  
41 Albuquerque and MRGCD  
42

43 (3) Send the proposed rule change to any person or group filing written request for notice of all such rule  
44 changes. A fee may be charged those requesting notices to cover reasonable county costs.  
45

1 (4) Solicit written comment on any proposed rule change for a period of 30 days from the date of its  
2 distribution and consider all comments before ruling on proposed rule changes.

3  
4 (5) Upon adoption of a contested rule change, issue a concise statement of his principal reasons for the  
5 rule change and statement of positions rejected in adopting the rule change together with the reasons for the  
6 rejection. All persons who submit any writing to be considered in connection with the proposed rule change  
7 shall promptly be given a copy of the decision, by mail or otherwise.

8  
9 (d) If a proposed rule change is approved by the county engineer after receiving comments, notice shall  
10 be posted in a conspicuous place in the city/county government center, and a reasonable effort shall be  
11 made to notify all interested parties. Proposed rule changes shall not take effect sooner than 30 days from  
12 posting of notice or sooner than 90 days from the original distribution for comment.

13  
14 (e) In the event of an emergency, the chairman of the board of county commissioners may direct that  
15 rules concerning procedures, criteria or standards take effect immediately upon their posting and  
16 distribution. The chairman's finding of an emergency and brief statement of the reasons for this finding  
17 shall be incorporated in the emergency and brief statement of the reasons for this finding shall be  
18 incorporated in the emergency rule change. Upon adoption of an emergency rule change which change  
19 shall remain in effect for longer than 60 days, notice to the public shall be given within seven days, and  
20 opportunity for public comment shall be given in the manner required in this section for proposed rules.

21  
22 (f) Appeal of the county engineer's rulemaking decisions is as provided in section 38-172. Regular rules,  
23 adopted under subsection (d) of this section, do not take effect until an appeal is decided if they are  
24 appealed prior to taking effect. Emergency rules adopted under subsection (e) of this section and regular  
25 rules which have taken effect prior to appeal are in effect until such time as they may be reversed by appeal  
26 action.

27  
28 (g) Recommendations for changes to this section may be prepared by a county technical standards  
29 advisory council, as established by the county street standards, Ordinance 88-42 or the most current version  
30 of this ordinance, or the county engineer. Proposals for standards changes shall be forwarded to the county  
31 engineer for his recommendations when changes are prepared by the county technical standards advisory  
32 council. The county engineer shall then forward his recommendations either for or against the proposed  
33 change to the board of county commissioners for their approval or disapproval.

34  
35 (Ord. No. 03-1, 1-14-03)

36  
37  
38 Sec. 38-174. Inspections.

39  
40 Whenever necessary to make an inspection to enforce any of the provisions of this article, the county  
41 engineer or his authorized representative may enter such premises at any reasonable time to inspect the  
42 premises or to perform any duty imposed upon him by this article; provided, however, that if such premises  
43 is occupied, he shall first present proper credentials and demand entry. If such premises is unoccupied, he  
44 shall first make a reasonable effort to locate the owner or other persons having charge or control of the  
45 premises and demand entry. If entry is refused or if the owner or other responsible person is not found, the

1 county engineer or his authorized representative shall proceed to obtain a search warrant by filing a  
2 complaint made in the metropolitan court or district court upon oath or affirmation. The complaint shall:

- 3
- 4 (1) Set forth the particular premises, or portion thereof sought to be inspected;
- 5
- 6 (2) State that the owner or occupant of the premises, or portion thereof, has refused entry;
- 7
- 8 (3) State that inspection of the premises, or portion of the premises is necessary to determine whether it  
9 complies with the requirements of this article;
- 10
- 11 (4) Set forth the particular provisions of this article sought to be enforced;
- 12
- 13 (5) Set forth any other reason necessitating the inspection, including knowledge or belief that a particular  
14 condition exists in the premises or portion of the premises which constitutes a violation of this article; and
- 15
- 16 (6) State that the complainant is authorized by the county to make the inspection. Each inspector shall be  
17 furnished with an identification card signed by the county engineer indicating his authority and must  
18 present such card to the metropolitan court or district court for the purpose of this section, and to other  
19 persons, when requested to do so during the performance of his duty. No owner or occupant or any other  
20 person having charge, care or control of any premises shall fail or neglect, after proper demand is made as  
21 provided in this section, to promptly permit entry therein by the authorized inspector for the purpose of  
22 inspection and examination pursuant to this article.

23  
24 (Ord. No. 03-1, 1-14-03)

25  
26  
27 Sec. 38-201. General provisions.

28  
29 (a) The county is and shall remain an active participant in the National Flood Insurance Program. The  
30 county endorses the program goal of flood damage reduction through the regulation of development within  
31 flood hazard areas and the preservation of floodways. This article is intended to complement and  
32 supplement article II of this chapter, and shall be administered in concert therewith.

33  
34 (b) All developed land within the county shall be provided with adequate drainage, flood control and  
35 erosion control facilities. The protection of life and property shall be considered the primary function in the  
36 planning, design, construction and maintenance of drainage control, flood control and erosion control  
37 facilities, but other concerns, not limited to the following, shall be addressed: channel capacity, watershed  
38 characteristics, channel stability, maintenance, transitions between treatment types, multiple use goals and  
39 appearance. The needs of the community in transportation, utility services, recreation and open space shall  
40 be considered in planning, design, construction and maintenance (especially in the selection of channel  
41 treatment measures). These needs shall always be considered subsidiary to the primary function of the  
42 drainage control, flood control and/or erosion control facility.

43  
44 (c) The design, construction and maintenance of dams, levees and diversions that fall within the  
45 jurisdiction of the state engineer shall meet or exceed standards established by the state engineer.

1  
2 (d) The design, construction and maintenance of flood control and stormwater quality control facilities  
3 that fall within the jurisdiction of AMAFCA shall be coordinated with AMAFCA. The design, construction  
4 and maintenance of flood control and stormwater quality control facilities that fall within the jurisdiction of  
5 the city shall be coordinated with the city.

6  
7 (e) The design, construction and maintenance of flood control and stormwater quality control facilities  
8 shall not allow any additional flows to be routed into MRGCD facilities unless specific plans are approved  
9 by the district. It shall be the responsibility of the developer to obtain all necessary approvals and permits  
10 from the MRGCD.

11  
12 (f) All major facilities shall be constructed within dedicated rights-of-way or recorded drainage  
13 easements granted to and accepted by the proper public authority or historic channels and watercourse  
14 when easements or rights-of-way cannot be obtained.

15  
16 (g) All detention ponds that are also defined as minor facilities shall be constructed on private property,  
17 as follows unless otherwise authorized by the county engineer:

18  
19 (1) Except as is necessary for the treatment of nuisance water or to prevent smaller and more frequently  
20 occurring storms from damaging downstream property, arroyos and watercourses, ponds shall be designed  
21 and constructed to be emptied in 24 hours or less. Ponds with evacuation times greater than six hours and  
22 less than or equal to 24 hours shall be designed to safely carry a 100-year, 24-hour storm.

23  
24 (2) Ponds may be designed to be emptied for periods longer than 24 hours and up to 96 hours where  
25 downstream capacity limits allowable discharge and when such ponds are either:

26  
27 a. Designed to safely carry a 100-year, 96-hour storm; or

28  
29 b. Designed to safely carry a ten-year design storm (six-hour) followed immediately by a 100-year  
30 design storm (six-hour).

31  
32 (3) Where the lack of an adequate outfall prevents the discharge of stormwater to a downstream facility  
33 of adequate capacity, the design may provide for on-site retention of the storm runoff. The volume of the  
34 retention facility shall be equal to the volume of runoff generated from the site for: a 100-year, ten-day  
35 storm, or two consecutive 100-year design storms (six-hour). Design of retention facilities may include the  
36 influence of long-term soil infiltration rates where substantiated by tests and documentation. In no case  
37 shall retention facilities be smaller than the volume required to hold a 100-year, 24-hour storm without  
38 infiltration. Retention facilities shall be considered temporary facilities unless demonstrated to be otherwise  
39 to the satisfaction of the county engineer.

40  
41 (4) Detention ponds may be designed to include a retention capacity for a portion of the pond volume.  
42 Sizing of the pond shall be based on the storm length equivalent to the time to empty the entire pond.

43  
44 (5) Where detention and retention ponds are designed based on impervious areas being less than 40  
45 percent of the total drainage area, or where undeveloped areas contribute flow to the ponds, ponds shall

1 provide for additional volume to accommodate sediment. Detention and retention ponds should, where  
2 practical, be located in such a manner as to allow for discharge to future outfall facilities when they become  
3 available. In computing runoff, no credit will be given to individual lot ponding in residential zones except  
4 when such ponds are protected by a drainage covenant and are accessible to and maintainable by county  
5 maintenance equipment. All retention and detention ponds shall be constructed on private property unless  
6 otherwise authorized by the county engineer. Any water draining from public right-of-way that is conveyed  
7 through or ponded on private property shall require a drainage covenant and/or a drainage easement except  
8 in recorded drainage or flood control easements or rights-of-way or historic channels and watercourses  
9 where easements or rights-of-way cannot be obtained.

10  
11 (h) All detention and retention facilities shall have a designated overflow spillway. The overflow  
12 spillway shall, as a minimum, be capable of safely discharging the runoff entering the facility from a 100-  
13 year design storm. Safety shall be considered in the design of detention and retention facilities.

14  
15 (i) Where a site development, building permit, a major or minor subdivision or a replat alters the  
16 elevation or location of any designated 100-year floodplain, as shown on current FEMA flood insurance  
17 rate maps, the developer shall be required to provide to the county engineer all necessary data needed to  
18 effect the flood boundary revision or amendment. Any required fees for processing shall be the  
19 responsibility of the developer.

20  
21 (j) Site development and major or minor subdivisions for or replats for industrial activities shall be  
22 designed and constructed such that non-stormwater discharges into storm sewers, arroyos or watercourses  
23 will not occur.

24  
25 (k) Where flood control, drainage or erosion control improvements are necessary within dedicated or  
26 proposed public open space, such improvements shall be designed and constructed in a manner reasonably  
27 consistent with the natural surroundings. All construction and maintenance activities in dedicated open  
28 space shall be performed so as to minimize the disruption and destruction of vegetation and adjacent land  
29 forms. Where such disturbance or destruction is unavoidable, revegetation shall be performed at the earliest  
30 practical time by the responsible person responsible for such disturbance and/or destruction.

31  
32 (l) The county engineer is responsible for establishing criteria, procedures and standards for design and  
33 construction of flood control, drainage control and erosion control improvements within the county. The  
34 county engineer shall be responsible, subject to the direction of and approval by the board of county  
35 commissioners, for preparing and adopting a drainage management plan for all watersheds in its  
36 jurisdiction unless AMAFCA has assumed responsibility therefor. The county engineer is also the  
37 designated flood control official for the county in accordance with the requirements of the Federal  
38 Insurance Administration.

39  
40 (Ord. No. 03-1, 1-14-03)

41  
42  
43 Sec. 38-202. Surface use of streets for drainage and flood control purposes.  
44



1 (a) Generally. The surface of streets may be used for drainage and flood control purposes, to the extent  
2 such use does not interfere with the safe transportation of people and vehicles.

3  
4 (b) Urban streets.

5  
6 (1) The 100-year design storm runoff shall be contained within the street right-of-way and shall not  
7 exceed a depth of 87 percent of the difference between the gutter flowline elevation and the adjacent right-  
8 of-way elevation, and shall in no event exceed 0.87 feet. Storm runoff from the 100-year storm and smaller  
9 storms shall not enter private property from a street, except in recorded drainage or flood control easements  
10 or rights-of-way or historic channels and watercourses where easements or rights-of-way cannot be  
11 obtained.

12  
13 (2) The ten-year design storm runoff shall not exceed a depth of 50 percent of the difference in elevation  
14 between the gutter flowline elevation and the adjacent right-of-way elevation and shall flow such that one  
15 12-foot driving lane in each direction is free of flowing or standing water in any arterial street. Arterial  
16 streets that are in the state highway system may require more stringent drainage criteria.

17  
18 (3) The ten-year design storm runoff shall not exceed a depth of 50 percent of the difference in elevation  
19 between the gutter flowline elevation and the adjacent right-of-way elevation in any collector street.  
20 Collector streets that are in the state highway system may require more stringent drainage criteria.

21  
22 (4) The product of depth times velocity shall not exceed 6.5 at any location in any street in the event of a  
23 ten-year design storm (with velocity calculated as the average velocity measured in feet per second and  
24 depth measured at the gutter flowline in feet).

25  
26 (5) The discharge of nuisance waters to public streets shall be discouraged. Arterial and collector streets  
27 shall be protected from damages to the pavement surface and from the safety hazards created by  
28 surface flow of nuisance waters across them.

29  
30 (6) All developed land, with urban street sections, within the county shall be served by an access that  
31 shall be an all-weather facility during a 100-year design storm, with all channel crossing structures beneath  
32 the roadway being able to pass a 100-year design storm runoff event.

33  
34 (c) Rural streets.

35  
36 (1) The design flow depth and velocity in the project design swale (see County Street Standards,  
37 Ordinance No. 88-42) shall be such that the integrity of the street surfacing is not endangered.

38  
39 (2) Design and construction of the project design swale shall include provisions for erosion control.  
40 Measures to minimize erosion of the project design swale may include, but are not limited to, granular  
41 (gravel) filter and riprap lining, soil cement or asphalt lining.

42  
43 (Ord. No. 03-1, 1-14-03)

44  
45

1 Sec. 38-203. Crossings.  
2

3 (a) Channel crossing structures shall be provided on all arterial and collector streets to safely pass the  
4 100-year design storm runoff from major arroyos assuming a fully developed watershed.  
5

6 (b) Streets other than arterial, collector and sole access streets to major subdivisions may cross major  
7 arroyos and other watercourses by means of a dip section or overflow section, provided that depth times  
8 velocity (with velocity calculated as the average velocity measured in feet per second and depth measured  
9 in feet at the upstream edge of the roadway including sidewalk, if applicable) does not exceed 6.5 for that  
10 portion of the ten-year design storm runoff crossing the street. However, the depth of flow shall not be  
11 greater than 0.67 feet for urban or rural streets.  
12

13 (c) Where feasible, temporary crossings shall be designed so they may be incorporated into the future  
14 permanent crossing structure and so that they meet street design standards established by the county  
15 engineer.  
16

17 (d) Crossing of major arroyos by arterials and collectors shall be constructed at public expense, provided  
18 that public funds are available. Crossing of arroyo by streets other than arterials and collectors shall be  
19 constructed at the developer's expense and shall meet street design standards established by the county  
20 engineer.  
21

22 (e) Temporary crossing required for access, including those on arterials and collectors, shall be  
23 constructed at the developer's expense.  
24

25 (f) Temporary and permanent crossings of MRGCD and AMAFCA facilities shall be coordinated with  
26 the MRGCD and/or AMAFCA, as applicable.  
27

28 (Ord. No. 03-1, 1-14-03)  
29  
30

31 Sec. 38-204. Financial responsibility and guarantee.  
32

33 (a) The county may participate in the construction of permanent flood control facilities to the extent that  
34 public benefits are derived from such construction and subject to the availability of public funds.  
35

36 (b) The county may participate in the costs of channel crossing structures on arterial and collector streets  
37 which are required for sole access to a development, provided that public funds are available.  
38

39 (c) Except as otherwise provided in this section, all drainage control, flood control facilities and  
40 stormwater quality control facilities that directly result from a proposed subdivision or site development are  
41 the responsibility of the developer. Developer-financed facilities include all those within the boundaries of  
42 the development, those required for development adjacent to a major arroyo or within a flood hazard area  
43 and all temporary and permanent off-site drainage facilities. If the construction of such facilities is a  
44 condition of plat approval or building permit issuance, then financial guarantees of such construction  
45 satisfactory to the county engineer shall also be provided as a prerequisite. The format of such guarantees

1 shall be as set forth in the county street standards improvements agreement. The county engineer shall  
2 coordinate the construction and location of temporary facilities with AMAFCA and the city where  
3 applicable. If the ultimate on-site drainage control, flood control, and/or erosion control facilities require  
4 permanent rights-of-way or easements, such rights-of-way or easements shall be dedicated at the time of  
5 platting or building permit issuance, whichever occurs first.

6  
7 (d) Except as allowed by AMAFCA Resolution 81-8 and amendments thereto, the dedication of land for  
8 public purposes does not relieve a developer of responsibilities for the construction of drainage control,  
9 flood control, erosion control and stormwater quality control facilities that would otherwise be necessary.  
10 The dedication of rights-of-way or easements for drainage control, flood control or erosion control facilities  
11 does not relieve a developer of responsibilities that would otherwise exist for the construction of other  
12 public infrastructure.

13  
14 (Ord. No. 03-1, 1-14-03)

15  
16  
17 Sec. 38-205. Multiple use rights-of-way and easements.

18  
19 Multiple use is encouraged for drainage rights-of-way and drainage easements including, but not limited  
20 to, utility corridors and recreation trails. Where multiple use is planned by the county, another public  
21 agency or a public utility, the county may require that dedication statements include language which  
22 permits such specified multiple uses in addition to the primary drainage function. However, land required  
23 to be dedicated for drainage rights-of-way shall be limited to those land areas necessary for drainage  
24 control, flood control, erosion control and necessary appurtenances.

25  
26 (Ord. No. 03-1, 1-14-03)

27  
28  
29  
30 Sec. 38-206. Maintenance responsibility.

31  
32 (a) Except as otherwise noted in this section, the county or other public body shall maintain all  
33 permanent major facilities that receive drainage from public rights-of-way. The maintenance of multiple  
34 use facilities to which the general public is denied access shall be the responsibility of the owners and shall  
35 be performed to county engineer standards. The county engineer may allow private maintenance within  
36 public rights-of-way or easements, provided that adequate guarantees and indemnifications are supplied.

37  
38 (b) Their owners to county engineer standards shall maintain minor facilities. Based on likelihood and  
39 consequence of failure, or failure to maintain, the county engineer may require a drainage covenant.

40  
41 (c) The maintenance of temporary facilities constructed at private expense is the responsibility of the  
42 developer until permanent facilities are in place. However, those temporary facilities which, in the event of  
43 failure of the facility, or failure to maintain, would endanger existing downstream facilities, other properties  
44 or the general public shall require a drainage covenant.

(d) The maintenance of major facilities that only serve private property or a development is the responsibility of the developer and/or owner. In each case, a drainage covenant shall be required.

(Ord. No. 03-1, 1-14-03)